

Director's Office  
AUG 08 2011  
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IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

JEFF BRAKKE and  
BRAKKE IMP., INC.  
Cerro Gordo County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ- 21  
NO. 2011-SW- 24

TO: Jeff Brakke  
17551 Killdeer Avenue  
Mason City, Iowa 50401

Gerald M. Stambaugh  
Brakke Imp., Inc.  
11 4<sup>th</sup> St NE  
P.O. Box 1567  
Mason City, IA 50401-567

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Brakke Imp., Inc. and Jeff Brakke for the purpose of resolving violations pertaining to open dumping and open burning of trade waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Cindy Garza  
Iowa Department of Natural Resources  
Field Office No. 2  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Phone: 641/424-4073

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

II. JURISDICTION

\$ 3,208.50  
to "IA DNR"

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This administrative order is issued pursuant to the provisions of Iowa Code section 455B.307 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1 Brakke Imp., Inc. is an agricultural dealership located at 17551 Killdeer Avenue, in Mason City, Cerro Gordo County, Iowa. Jeff Brakke purchased two adjacent properties to Brakke Imp., Inc. that are located at 11423 and 11483 275<sup>th</sup> Street in Mason City, Cerro Gordo County, Iowa. The property at 11483 275<sup>th</sup> Street (the site) has several wooden structures, a corn crib, and a barn, and is used by Jeff Brakke to store combine head trailers from Brakke Imp., Inc. This site was the location of the burning of trade wastes from Brakke Imp., Inc.

2 On May 11, 2011 DNR Field Office No. 2 received an anonymous complaint that a driver on Highway 122 observed thick, black smoke, possibly from the open burning of tires. On May 11, 2011, Cindy Garza of DNR Field Office No. 2 investigated the site and discovered a burning pile containing pallets, oil filled plastic jugs, cardboard tubes, gallon paint cans, oil filters, spray cans, furniture, broken windows, strapping, a lawn mower seat, and gallon square cans from solvents. The ash and metal pile involved was large indicating past burning had occurred at the site. The new items were burning on the southwest side of the pile. Ms. Garza determined that the thick, black smoke was due to the jugs of oil. While at the site, Ms. Garza spoke to Kenny Smith, an employee of Brakke Imp., Inc., who was conducting the burning. Mr. Smith indicated that the material in the burn pile came from Brakke Imp., Inc. and would be considered trade waste.

3 A May 11, 2011 Notice of Violation letter (NOV) was sent to Jeff Brakke at Brakke Imp., Inc. for open burning and required that open burning be immediately ceased, recyclable material be taken to an approved salvage yard, and nonrecyclable material disposed at a sanitary landfill. The NOV also stated that under no circumstances should thick, black smoke be generated in burning.

4 On May 23, 2011, DNR received a letter from Mr. Jeff Paullus, Controller for Brakke Imp., Inc., describing the elements Brakke Imp., Inc. will follow to properly recycle or dispose of solid waste in the future in compliance with the

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NOV sent on May 11, 2011. The plan described by Mr Paullus includes informing all employees of Brakke Imp., Inc. that there should be no dumping or burning anywhere on the premises, having a full time employee take any future trade waste to a landfill for proper disposal, and cleaning the burn location with material being taken to a landfill. This plan was submitted to DNR Field Office No 2 along with receipts documenting disposal of at least some of the remaining solid waste at the burn location as requested by the NOV dated May 11, 2011. The receipts included recycling of material at Behr Iron and Steel, Inc. and landfill tickets for truck tires, tractor tires, and other material in total amount of \$291.50.

5. Jeff Brakke and Brakke Imp., Inc. have a past history of illegal open burning and open dumping. On October 10, 2005, Jeremy Klatt and Eric Wiklund, both Environmental Specialists with DNR Field Office No. 2, witnessed the open burning of trade wastes at Brakke Imp., Inc. located at 17551 Killdeer Avenue in Mason City, Cerro Gordo County, Iowa. A hole had been dug and the solid waste was burning inside, including cardboard, paint cans, glass bottles, paper, and other materials. An October 17, 2005, NOV was sent to Jeff Brakke at Brakke Imp., Inc. requiring him to cease open dumping and open burning of trade waste. The NOV indicated that trade waste needed to be disposed of at a permitted sanitary landfill. On October 20, 2005, the NOV, which included copies of the open burning and solid waste regulations, was received by Linda McNamara, an employee of Brakke, Imp., Inc.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of trade waste by Jeff Brakke and Brakke Imp., Inc demonstrates violations of this provision

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open

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dumping of trade waste by Jeff Brakke and Brakke Imp., Inc. demonstrates non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and Jeff Brakke and Brakke Imp., Inc. agree to the following:

1. Jeff Brakke and Brakke Imp., Inc. shall develop a written plan that details Brakke Imp., Inc.'s waste streams and how Brakke Imp., Inc. will properly recycle or dispose of solid waste in the future in compliance with all state and local requirements. The plan shall be submitted to DNR Field Office No 2 along with receipts documenting proper disposal of remaining solid waste at 11483 275<sup>th</sup> Street in Mason City, Cerro Gordo County, Iowa and documentation indicating that proper disposal of trade waste is currently taking place at Brakke Imp., Inc. within 30 days of the date this order is signed by the Director;

2. Jeff Brakke and Brakke Imp., Inc. shall immediately discontinue improper open dumping and improper open burning of solid waste, including trade waste, and other materials at any location in the State of Iowa; and Jeff Brakke and Brakke Imp., Inc. shall comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning; and

3. Jeff Brakke and Brakke Imp., Inc. shall pay a penalty of \$3,208.50 within 30 days of the date this order is signed by the Director.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,208.50 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

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Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Jeff Brakke and Brakke Imp., Inc. have achieved an economic benefit from open burning and improper waste disposal. They have saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of trade waste from Brakke Imp., Inc. Local wood waste could have been separated and processed by a landfill so Jeff Brakke and Brakke Imp., Inc. saved the cost of monthly rental and disposal fees for a wood waste dumpster. Other trade waste should have been disposed of in a regular dumpster. It is unclear the number of years the facility has been open burning waste. Estimated cost of a wood recycling dumpster and a garbage dumpster for a year is \$1,500. Jeff Brakke and Brakke Imp., Inc. paid \$291.50 to dispose of the remaining burned material at a sanitary landfill. This disposal cost subtracted from proper disposal for a year of trade waste estimated at \$1,500 results in \$1,208.50. Therefore, a penalty of \$1,208.50 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined that the most equitable and efficient means of resolving the matter is through an administrative consent order. Failure to properly dispose of solid waste materials threatens the integrity of the regulatory program. The open burning of solid waste can release toxins that pollute the air and may pose a risk to human health and the environment. Therefore, \$500.00 is assessed for gravity of violation.

Culpability – Jeff Brakke and Brakke Imp., Inc. have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Further, the open burning of trade wastes is specifically prohibited. Also, Jeff Brakke and Brakke Imp., Inc. were informed of the state's open burning and solid waste disposal regulations in a Notice of Violation letter issued by DNR Field Office No. 2 in 2005. Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

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This administrative consent order is entered into knowingly and with the consent of Jeff Brakke and Brakke Imp, Inc. For that reason, Jeff Brakke and Brakke Imp, Inc. waive their rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

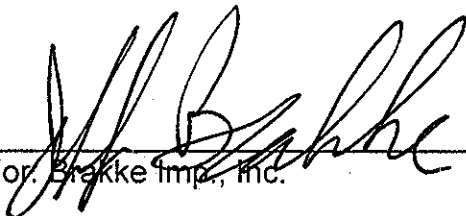
Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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Roger L. Lande, Director  
Iowa Department of Natural Resources

Dated this 18th day of  
August, 2011.

  
\_\_\_\_\_  
Jeff Brakke

Dated this 3rd day of  
August, 2011.

  
\_\_\_\_\_  
For: Brakke Imp., Inc.

Dated this 3rd day of  
August, 2011.

Cerro Gordo County Air Quality file; Anne Preziosi; DNR Field Office 2